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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/810,233

03/27/2004

William Paul Carroll

9458

7590

12/29/2004

William P. Carroll
118 Sunset Dr.
Derby, CT 06418

EXAMINER

GUADALUPE, YARITZA

ART UNIT

PAPER NUMBER

2859

DATE MAILED: 12/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/810,233

Applicant(s)

CARROLL, WILLIAM PAUL

Examiner

Yaritza Guadalupe McCall

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. ____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>6/16/2004</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Arrangement of the Specification

1. As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

(a) TITLE OF THE INVENTION.

(b) CROSS-REFERENCE TO RELATED APPLICATIONS.

(c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR
DEVELOPMENT.

(d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A
COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program
listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables
having more than 50 pages of text are permitted to be submitted on compact
discs.) or

REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a).

"Microfiche Appendices" were accepted by the Office until March 1, 2001.)

(e) BACKGROUND OF THE INVENTION.

(1) Field of the Invention.

(2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.

(f) BRIEF SUMMARY OF THE INVENTION.

(g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).

(h) DETAILED DESCRIPTION OF THE INVENTION.

(i) CLAIM OR CLAIMS (commencing on a separate sheet).

(j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

(k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A “Sequence Listing” is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required “Sequence Listing” is not submitted as an electronic document on compact disc).

Content of Specification

- (a) Title of the Invention: See 37 CFR 1.72(a) and MPEP § 606. The title of the invention should be placed at the top of the first page of the specification unless the title is provided in an application data sheet. The title of the invention should be brief but technically accurate and descriptive, preferably from two to seven words may not contain more than 500 characters.
- (b) Cross-References to Related Applications: See 37 CFR 1.78 and MPEP § 201.11.
- (c) Statement Regarding Federally Sponsored Research and Development: See MPEP § 310.

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- (d) Incorporation-By-Reference Of Material Submitted On a Compact Disc: The specification is required to include an incorporation-by-reference of electronic documents that are to become part of the permanent United States Patent and Trademark Office records in the file of a patent application. See 37 CFR 1.52(e) and MPEP § 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text were permitted as electronic documents on compact discs beginning on September 8, 2000.

Or alternatively, Reference to a "Microfiche Appendix": See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.

- (e) Background of the Invention: See MPEP § 608.01(c). The specification should set forth the Background of the Invention in two parts:
- (1) Field of the Invention: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field."
 - (2) Description of the Related Art including information disclosed under 37 CFR 1.97 and 37 CFR 1.98: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are solved by the applicant's invention. This item may also be titled "Background Art."
- (f) Brief Summary of the Invention: See MPEP § 608.01(d). A brief summary or general statement of the invention as set forth in 37 CFR 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.
- (g) Brief Description of the Several Views of the Drawing(s): See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.
- (h) Detailed Description of the Invention: See MPEP § 608.01(g). A description of the preferred embodiment(s) of the invention as required in 37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known

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in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.

- (i) Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet (37 CFR 1.52(b)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP § 608.01(i)-(p).
- (j) Abstract of the Disclosure: See MPEP § 608.01(f). A brief narrative of the disclosure as a whole in a single paragraph of 150 words or less commencing on a separate sheet following the claims. In an international application which has entered the national stage (37 CFR 1.491(b)), the applicant need not submit an abstract commencing on a separate sheet if an abstract was published with the international application under PCT Article 21. The abstract that appears on the cover page of the pamphlet published by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) is the abstract that will be used by the USPTO. See MPEP § 1893.03(e).
- (k) Sequence Listing. See 37 CFR 1.821-1.825 and MPEP §§ 2421-2431. The requirement for a sequence listing applies to all sequences disclosed in a given application, whether the sequences are claimed or not. See MPEP § 2421.02.

See for example U.S. Patent No. 6,237,233 to (Cloutier et al.).

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "85" and "90" have both been used to designate the adjustable knobs (See first paragraph of the Specification in page 7). In addition, reference element # 85 has not been identified in the drawings.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

3. Claims 1 – 3 are objected to because of the following informalities:

a. The claim or claims must commence on a separate sheet (37 CFR 1.52 (b)).

Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate sub combinations or related steps. See 37 CFR 1.75 and MPEP § 608.01

(i) – (p). Appropriate correction is required

b. The claim should begin and include only one capital letter. Where a claim sets forth a plurality of elements or steps, each element or step should be separated by a line indentation and begin with a lower case. See 37 CFR 1.75 and MPEP § 608.01(m).

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1 – 3 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01.

The omitted structural cooperative relationships are the structural relationship between the one piece 90 degrees right angle square, the box beam jamb, the cam levers, the calibration screws, and the flange blocks or plates as stated in claims 1 – 3. In this case, Applicant should indicate how the elements mentioned above are structurally related to each other. See for example the claims in U.S. Patent No. 6,237,233 to Cloutier et al. The claims are lacking structural features to define how the one piece 90 degrees right angle square, the box beam jamb, the cam levers, the calibration screws, and the flange blocks or plates are related/interconnected

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to each other. In this case, applicant should state how the elements mentioned above are structurally related to each other. No new matter should be added.

Due to the lack of information in the interconnection between elements claimed, a proper understanding of the claimed subject matter has been difficult. For purposes of examination, any further rejections of the claims on Prior Art are based on an interpretation of the claims as they are best understood by the Examiner.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1 – 3 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Channell (US 4,910,876) in view of Scarborough et al. (US 5,433,011), in view of Drumright (US 4,862,595), in view of Hale et al. (US 6,442,853) and further in view of Theobald et al. (US 4,947,594).

With respect to claim 1, Channell discloses a level device to be used when installing door jambs (See Column 3, lines 21 – 23) comprising a solid, one piece 90 degree right angle Square (10, 26) having a tube portion (24), and an I – beam level jamb (12).

With respect to the method as stated in claim 2, Channell discloses a device which will perform the step of inserting a solid 90 degree right angle square into an I-beam level (See Figure 1 and dashed lines in Figure 2) since the I – beam level (12) will connect to the right angle square (10) by a connector member (24) which has an opening (28) that allows the I – beam level to be inserted and retained as shown in Figure 3.

Channell does not discloses the plastic liner, the thru hole sleeves, the cam levers and calibration screws, and the flange blocks / plates with adjustable standoff discs as stated in claim 1. Channell does not disclose the long hollow box beam tube and plastic liner, the cam levers, casting, and calibration screws as stated in claim 3.

Regarding to the box beam tube as stated in claims 1 and 3 : Channell discloses a one piece 90 degree right angle Square (10, 26) and a conventional carpenter's level (12) having an I-beam configuration, said right angle square having a tube portion (24) having an opening to establish a connection that receives the center portion (16) of the I – beam in order to form the 90 degrees tool. Drumright discloses a conventional carpenter's level having an I – beam portion (20) connected to a long hollow box beam tube portion (50, 52) by said box beam tube receiving said I – beam portion (See Column 4, lines 60 – 67) in order to provide a structural

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connection that adapts said level to fit in the box beam for storage. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to replace the connection by shifting the position of the I – beam level and tube portion disclosed by Channell with a connection having a box beam jamb tube receiving an I – beam portion as taught by Drumright in order to provide a structural connection that adapts said level to fit in the box beam for storage and since shifting the location of the I – beam level and box beam tube from the location shown by Channell, absent any criticality, is only considered to be an obvious modification of Channell device that a person having ordinary skill in the art at the time the invention was made would be able to provide using routine experimentation since the courts have held that there is no invention in shifting the position if the operation of the device would not be thereby modified. In re Japikse, 86 USPQ 70 (CCPA 1950).

With respect to the cam levers as stated in claims 1 and 3 : Scarborough et al. discloses a segmented level comprising a box beam tube (30) to be connected with box beam segments (10, 20) by engaging means (70, 150) for applying a lateral force but gives the option of using cam lever arrangements as an alternative in order to allow this engagement between the each segment (See Columns 3 and 4, lines 68 and 1 – 4 respectively). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add a cam lever engaging means as taught by Scarborough et al. to the device disclosed by Channell and Drumright in order to provide a secondary attachment means that increases the safety of the tool and minimizes the chance for undesired displacement of the segments when in used.

In regards to the flange blocks, plates, calibrations screws and thru hole sleeves as stated in claim 1: Hale et al. discloses a door jamb square tool made of two extensions combined to form a right angle tool having flange blocks (50), and plates (60) equipped with calibration screws (70, 74, 82) and thru hole sleeves that allows positioning of the tool to accommodate different sized door jambs and to secure the tool to the wall (See Figure 1 and Column 3, lines 48 – 50). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add flange blocks, plates, calibrations screws and thru hole sleeves as taught by Hale et al. to the device disclosed by Channell, Drumright and Scarborough in order to allow positioning of the tool to accommodate different sized door jambs and to safely secure the tool to the wall (See Figure 1 and Column 3, lines 48 - 50).

With regards to adjustable standoff disks as stated in claim 1 : Channell, Drumright, Scarborough et al. and Hale et al. disclose a device as stated above, having a solid one piece 90 degrees right angle square having cam levers for securing the segments together, and also having flange blocks, plates and calibration screws to help accommodate the device to different sized door jambs and to secure the tool to the wall. The use of the particular type of fasteners claimed by applicant, i.e., adjustable standoff disks, absent any criticality, is considered to be nothing more than a choice of engineering skill, choice or design because 1) neither non-obvious nor unexpected results, i.e., results which are different in kind and not in degree from the results of the prior art, will be obtained as long as the device is securely mounted to the wall, as already suggested by Channell, Scarborough et al. and Hale et al., 2) the fastener claimed by Applicant and the fasteners used by Channell, Scarborough et al. and Hale et al. are well known alternate

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types of fasteners which will perform the same function, if one is replaced with the other, of securely mounting the device to the wall, and 3) the use of the particular type of fasteners by Applicant is considered to be nothing more than the use of one of numerous and well known alternate types of fasteners that a person having ordinary skill in the art would have been able to provide using routine experimentation in order to securely mount the device to the wall as already suggested by Channell, Scarborough et al. and Hale et al.

With respect to the plastic liner as stated in claims 1 and 3 : Theobald et al. discloses a device for adjusting and securing window frames and doors (20) which engages the frame of said window or door (See Figure 1), said device having surfaces (25) contacting the frame, said surfaces being covered with a relatively soft coating / liner, such as a plastic coating / liner in order to prevent the frame from being scratched (See Column 3, lines 14 – 20). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a plastic coating / liner as taught by Theobald et al. in the box beam jamb tube disclosed by Channell, Drumright, Scarborough et al. and Hale et al. in order to prevent the frame / door jamb from being scratched (See Column 3, lines 14 – 20).

Regarding claim 3, Channell, Drumright, Scarborough et al. Hale et al., and Theobald et al. teaches a device wherein a long hollow box beam with cam levers, casting, and calibration screws are used as a method to obtain alignment and connection to a solid one piece 90-degree right angle square in relation to the box beam comprising a box beam tube and plastic liner and

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cam levers with calibration screws located on the upper edge of the box beam to connect said right angle square.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following references are considered of relevance to the present application :

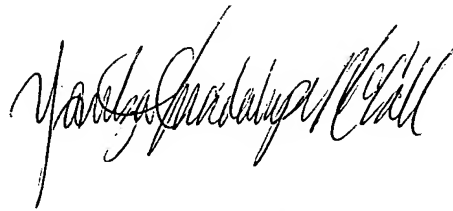
- Drumright (US 4,862,595)
- Hale et al. (US 6,615,500)
- Oldfield Jr. (US 6,810,592)
- Cloutier et al. (US 6,237,233)
- Englehart (US 4,707,925)
- Tuthill (US Pub. No. 2004/0000061)
- Semler Jr. (US 4,435,908)

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yaritza Guadalupe McCall whose telephone number is (571)272-2244. The examiner can normally be reached on 8:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Yaritza Guadalupe-McCall', is positioned above the printed name.

YGM
December 27, 2004

Yaritza Guadalupe-McCall
Patent Examiner
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